

1983

In Re: C. Demont Judd, Jr. : Respondent's Brief On Appeal

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER
OF
C. DEMONT JUDD, JR.

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Case No. 19, 117

RESPONDENT'S BRIEF ON APPEAL

Appeal from the Findings,
Conclusions and Recommendations
of the Utah State Bar Commission

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CLERK OF SUPREME COURT

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(R.11), but was unable to say why. Under question from Respondent's counsel, Ms. Hennefer could not say what it was that she did not have a chance to explain (R. 33-34).

The fact that Mr. Judd answered twenty (20) minutes late is de minimus and should be stricken. In undisputed testimony, Mr. Judd stated that he had appeared earlier in court, talked to counsel, advised that he was handling another matter elsewhere in the same court. When he returned, the case was tried. Mr. Judd stated he had the facts in mind (R. 37-December 7), and he had the written reserve (R. 40-December 7). A recess was had and Respondent conferred with his client (R. 42-December 7).

3. The Court found Ms. Hennefer guilty of the charge whereupon Respondent subsequently agreed to pursue an appeal on behalf of Ms. Hennefer to the District Court. Ms. Hennefer paid and Respondent accepted a fee of one hundred dollars to undertake said appeal.

4. Respondent filed a Notice of Appeal to the District Court but thereafter, failed to perfect said appeal. Respondent failed to file a memorandum of authorities as provided in the court rules and after having been advised to do so by the court, failed to appear at the hearing on the Motion to Dismiss the appeal filed by the prosecution. This hearing was held on April 16, 1979 regarding said appeal and Ms. Hennefer's appeal was dismissed.

5. Respondent did not advise Barbara Hennefer that her appeal had been dismissed, and said Barbara Hennefer was informed of this fact through communication with the court. However, Respondent testified that he did not know of the adverse decision and that he thus could not have advised Ms. Hennefer that the appeal had been dismissed.

6. On or about May 9, 1979, Respondent and said Barbara Hennefer had a conference discussing the status of the appeal. At that conference, Respondent gave to Barbara Hennefer a check evidencing a refund of Ms. Hennefer's fee of \$100, which check contained a restrictive endorsement thereon which purported to release Respondent from any liability to his client Barbara Hennefer. Ms. Hennefer accepted said check but did not cash or negotiate said check.

7. Ms. Hennefer was not damaged by any of the above. Mr. Johnson testified that he thought Mr. Judd had done a fine job representing Ms. Hennefer (R. 15-December 7) and that except for a mistrial request that an appeal would have made no difference (R. 17-18).

COUNT II

1. That Respondent undertook to represent one Rose Ann Grover Anderson in an annulment proceeding in November, 1979.

2. Rose Ann Grover Anderson, after the filing of her complaint by Respondent, moved to Chula Vista, California in November of 1979.

3. A trial date of April 17, 1980 was set for the trial of this matter by the District Court. At said trial, the Defendant and his counsel were present. The Plaintiff, Rose Ann Grover Anderson and Respondent, C. DeMont Judd, Jr. were not present. Respondent had made contact with the court and had received assurances that the case would not be tried on the 17th of April. This is uncontroverted.

*4. The Respondent, having knowledge of the said trial date, undertook representation of another client and appeared at a deposition in Provo, Utah, believing that his calendar was clear (R. 61 and 64).

*5. While it is true that Respondent did not notify his client of the trial date, he did have a discussion with her that he would let her know if the case was to be tried. He believed it would not be tried and thus gave no notice (R. 60, 65 and 94).

6. As a result of said trial, a Decree of Annulment was entered which included terms adverse to those for which Rose Ann Grover Anderson had requested that Mr. Judd present to the court. However, the decree was not adverse to the facts nor was it adverse in the opinion of Respondent and Mr. Timothy Blackham (R. 26 and 78).

Further, the complaint was countersigned by Rose Ann Grover Anderson (Exhibit 4).

*Further, consistent with the facts presented, the decision of the court was better than could be obtained by additional court proceedings (R. 26 and 78).

*Rose Ann Grover Anderson did not request either that the decree be set aside nor did she request an appeal. She preferred to file a complaint with the Bar (R. 78).

Rose Ann Grover Anderson was a sophisticated, knowledgeable person (R. 101). She acted in a less-than-honorable manner in the following particulars:

(a) She did not want her husband to know that she was pregnant. (She sought to keep this fact out of the complaint [R. 78]).

(b) After receiving a Restraining Order and Order to Show Cause seeking to restrain her from leaving the state, she nevertheless left the state with \$3,800.00 and the 1979 Toyota automobile (R. 58).

(c) She wanted \$10,000 as child support settlement but did not want her husband to know that she was bearing his baby (R. 78).

(d) She has to this day refused to honor the order and decree of the court.

*Rose Ann Grover Anderson could have mitigated her damages by allowing counsel to move to set aside the decree.

COUNT III

Based upon the foregoing, the only charges which can reasonably be made and sustained are:

1. That Respondent C. DeMont Judd failed to perfect an appeal on behalf of his client, Barbara Hennefer, in violation

of DR1-102 A (6) of the Revised Rules of Professional Conduct of the Utah State Bar; and

2. That Respondent attempted to exonerate himself from liability to his client in violation of DR6-101 A (2).

Respondent submits that the testimony of Rose Ann Grover Anderson is not credible and that count ought to be dismissed.

All matters in the counts addressed to the Respondent, arose while Case No. 16938 was under consideration either by the Disciplinary Committee of the Bar or by the Supreme Court. No complaint has subsequently been filed which has not been disposed of.

When asked by counsel about whether he was concerned about the matters referred to in this complaint, the response was as follows:

Q. Mr. Judd, you recognize, I take it, that there was probably some failure in perfecting the appeal, according to the rules that the Court was interpreting?

A. Yes.

Q. And how do you feel about that?

A. I feel very bad about that, very bad.

Q. If you had this process to do over again, what would your intentions be?

A. Well, I suppose the priorities would have to be rearranged, and I suppose that I would neglect my elected duty and be the lawyer. And that's the difficulty.

Q. You have had cause recently, have you not, to be much more aware of the Rules of Ethics of the State Bar Association, have you not?

A. Yes.

Q. And could you tell me whether or not these are very much in the forefront of your thinking, or not in the forefront of your thinking?

A. very much.

Q. This has become a real concern to you, has it?

A. It's a specter that hangs over my head day and night.

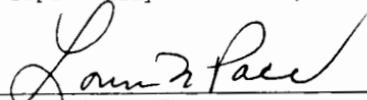
Q. Do you think that under similar circumstances with Mrs. Hennefer, that you could handle it, if the same circumstances were presented to you today, in such a way that even the filing of a complaint could be eliminated?

A. I would hope so.

No damage was done to either complaining witness and that there is no showing of moral turpitude.

Respondent became involved in these matters while the previous case was under appeal and he is most conscious of his responsibility as a lawyer. Accordingly, the Proposal 1 merits suspension and should be reduced to a reprimand.

Respectfully submitted,



LORIN N. PACE
Attorney for Respondent

CERTIFICATE OF MAILING

I certify that a mailed a true and correct copy of the foregoing Brief on Appeal to MR. JEFFERY PAOLETTI, Prosecutor, Utah State Bar Association, 420 East 100 South, Salt Lake City, Utah 84111, postage prepaid, this 4 day of June, 1983

Louis Pace